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MAR -- 7 2008

For The Northern Mariana Islands
By _____
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Antonio Alovera, Respondents

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS**

JOHN S. PANGELINAN,

Plaintiff,

vs.

DAVID A. WISEMAN, et al,

Defendants.

**ANGELITO TRINIDAD,
RONNIE PALERMO,
HERMAN TEJADA,
ESPERANZA DAVID,
ANTONIO ALOVERA, and
the UNITED STATES OF
AMERICA,**

Respondents.

Case No. CV 08-0004

**REPLY TO OBJECTION TO
MOTION TO DISMISS BY
ANGELITO TRINIDAD,
RONNIE PALERMO,
HERMAN TEJADA,
ESPERANZA DAVID,
ANTONIO ALOVERA ON
GROUNDS OF RES
JUDICATA;**

Date: April 17, 2008

Time: 9 am

Judge: Tydingco-Gatewood

John Pangelinan has filed an Objection to the Motion filed by
Angelito Trinidad, Ronnie Palermo, Herman Tejada, Esperanza David, and
Antonio Alovera (the "Trinidad Plaintiffs") to dismiss with prejudice any

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1 and all claims against them in this action. At the same time that admits he is
2 using this collateral action to vacate their Underlying Judgment, Pangelinan
3 challenges the Trinidad Plaintiffs' standing to make the motion – even
4 though he dragged them into this dispute in the first place.

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6 No one disputes that Pangelinan's intentional and deliberate disregard
7 of court orders has brought about significant consequences, nor are the
8 Trinidad Plaintiffs oblivious to the hardship attending Pangelinan's loss of
9 his land. Nevertheless, Pangelinan steered the course resulting in this
10 shipwreck all by himself. The Underlying Judgment is final. Pangelinan is
11 not entitled to declaratory relief. Pangelinan fails to state any claims against
12 the Trinidad Plaintiffs. For these reasons, the Trinidad Plaintiffs' request
13 for dismissal and an Order should be granted.
14

15 **Pangelinan is not Entitled to Declaratory Relief**

16 Consistent with the "cases" and "controversies" requirement of
17 Article III of the United States Constitution, the Declaratory Judgment Act
18 specifically conditions the issuance of declaratory relief on the presence of
19 an "actual controversy."^{1/} In other words, the Act presupposes "the
20

21 ¹ *E.g. McManus v. District of Columbia*, --- F.Supp.2d ----, 2007 WL 4573442
22 (D.D.C. Dec. 31, 2007) (Although the Declaratory Judgment Act allows the Court to
23 "declare the rights and other legal relations of any interested party seeking such
declaration," 28 U.S.C. § 2201, it "is not an independent source of federal subject matter
jurisdiction," quoting *Schilling v. Rogers*, 363 U.S. 666, 677, 80 S. Ct. 1288, 4 L.Ed.2d
1478 (1960) (citing *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671, 70 S.Ct.

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1 existence of a judicially remediable right.” *C & E Services, Inc. of*
 2 *Washington v. District of Columbia Water and Sewer Auth.*, 310 F.3d 197,
 3 201-202 (D.C.Cir.2002) (quoting *Schilling*, 363 U.S. at 677, 80 S.Ct. 1288).
 4 Black letter principles of jurisprudence dictate, therefore, that to invoke the
 5 Declaratory Judgment Act, Plaintiff must demonstrate that “there is a
 6 substantial controversy, between parties having adverse legal interests, of
 7 sufficient immediacy and reality to warrant the issuance of a declaratory
 8 judgment.” *Atlas Air, Inc. v. Air Line Pilots Ass’n, Int’l*, 69 F.Supp.2d 155,
 9 162 (D.D.C.1999), *rev’d on other grounds*, 232 F.3d 218 (D.C. Cir. 2000);
 10 *see also Federal Exp. Corp. v. Airlines Pilots Ass’n.*, 67 F.3d 961, 963-64
 11 (D.C. Cir. 1995). Where, as here, a litigant raises a claim that is barred by
 12 collateral estoppel or res judicata, there is no justiciable controversy
 13 entitling him to declaratory relief.
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 16 Time after time, Pangelinan has been instructed that the eight year old
 17 judgment obtained by the Trinidad Plaintiffs in *Trinidad v. Pangelinan*, Civil
 18 Action 97-0073 (the “Underlying Action”) is valid. Even in the Objection,
 19 Pangelinan recognizes that the Underlying Judgment has been affirmed on
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 876, 94 L.Ed. 1194 (1950).

1 three separate occasions by the Ninth Circuit Court of Appeals.^{2/}

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3
4 Pangelinan nevertheless maintains that he is entitled to a declaration
5 from this court that the Underlying Judgment is void because Rule 60(b)
6 authorizes “discretionary judicial revision of judgments” Objection at 6.
7 Not only is this twisted view of the facts patently erroneous, as applied to this
8 case, but it also plainly ignores the reality that Pangelinan has already
9 collaterally challenged the Underlying Judgment, the jurisdiction of the court
10 to issue the judgment, personal jurisdiction over the defendants – and he has
11 lost. *See Trinidad v. Pangelinan*, No. CV-97-00073 (March 20, 2000),
12 *aff’d*, 54 Fed.Appx. 470, 2003 WL 124471 (9th Cir.), *cert. denied*, 538 U.S.
13 1064, 123 S.Ct. 2232, 155 L.Ed.2d 1119 (2003) (affirmed judgment and
14 order denying Pangelinans’ Fed.R.Civ.P. 60(b)(4) motion to void the
15 judgment in Civil Action No. 97-00073 and further ruling that no additional
16 filings by the Pangelinans would be accepted in the closed appeal).

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21 ²*See Trinidad v. Pangelinan*, No. 02-16013 (9th Cir. Jan. 15, 2003);
22 *Trinidad v. Pangelinan*, Nos. 00-15697, 00-15705, 00-16630, 01-16622 (9th
23 Cir. March.15, 2002); *see also* 120 Fed.Appx. 742, 2005 WL 332757 (9th Cir.
Feb. 11, 2005) (again rejecting Pangelinans’ contention that the underlying
judgment was void and affirming order denying Pangelinans’ motion to
compel an accounting and granting Trinidad Plaintiffs’ motion for sanctions).

1 Nevertheless, Pangelinan continues to pontificate on the law of final
2 judgments, insisting upon his so-called right to challenge the Underlying
3 Judgment through declaratory relief. Where, as here, there is ample
4 evidence demonstrating to the court that a previous action challenging the
5 same judgment and involving the same parties had been dismissed, the
6 matter warrants dismissal on Rule 12(b) grounds. *Headwaters Inc. v. United*
7 *States Forest Service*, 399 F.3d 1047, 1054-1055 (9th Cir. 2005); *Larter &*
8 *Sons, Inc. v. Dinkler Hotels Co.*, 199 F.2d 854, 855 (5th Cir.1952) (case
9 disposed of by motion to dismiss raising grounds of res judicata).^{3/}

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12 As to “Respondents” in this case, Pangelinan raises nothing new. He
13 admits that he brought them into this case “because it is their judgment that
14 is to be annulled... .” Objection at 4. Notwithstanding Plaintiff’s entirely
15 inaccurate perception of what actually transpired in the Underlying Civil
16 Action, the trial court fully addressed his Article III objections and
17 expressly determined that it could exercise in personam jurisdiction over
18 Pangelinan. Where, as here, there is no issue for the court to decide as to
19 the validity of the Underlying Judgment, there is no substantial controversy
20 of sufficient immediacy *and reality* to warrant the issuance of a declaratory
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23 ³ Although ordinarily affirmative defenses may not be raised in a motion to
dismiss, res judicata may be asserted in a motion to dismiss when doing so does not raise
any disputed issues of fact. *See Scott v. Kuhlmann*, 746 F.2d 1377, 1378 (9th Cir.1984).

1 judgment. Because the court lacks subject matter jurisdiction to entertain
2 Pangelinan's declaratory judgment claim, the claim against the Trinidad
3 Plaintiffs must be dismissed.

4 **Respondents are Entitled to Sanctions and a Pre-Filing Injunction**

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6 However he has named them and in whatever role Pangelinan has
7 cast them, it is abundantly clear that Pangelinan drew the Trinidad Plaintiffs
8 into this case to cause them to expend further resources and waste their time
9 as players in his *danse macabre*. Indeed, Pangelinan never even bothers to
10 address their argument for sanctions or the reality that a pre-filing
11 injunction is plainly warranted at this juncture.

12
13 Pangelinan's efforts to avoid these consequences by calling the
14 Trinidad Plaintiffs "Respondents," instead of Defendants, is entirely
15 unsuccessful: Pangelinan is simply incapable of leaving his former
16 employees in peace. For these reasons, and for the reasons set forth in their
17 Memorandum, costs and expenses incurred in responding to the Complaint
18 should be awarded to the Trinidad Plaintiffs. No clearer case exists,
19 moreover, warranting the imposition of a pre-filing injunction – which
20 Pangelinan has failed to oppose.

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22 Respectfully submitted this 7th day of March, 2008.
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